

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JACK REESE, JAMES CICHANOFSKY,  
ROGER MILLER,  
and GEORGE NOWLIN on  
behalf of themselves and  
a similarly situated class,

Hon. Patrick J. Duggan

Case No. 04-70592

Plaintiffs,

v.

**Class Action**

CNH GLOBAL N.V., formerly  
known as Case Corporation,  
and THE COMPANY LLC,

Defendants.

---

Roger J. McClow (P27170)  
David R. Radtke (P47016)  
Darcie R. Brault (P43864)  
McKNIGHT, McCLOW, CANZANO  
SMITH & RADTKE, P.C.  
Attorneys for Plaintiffs Reese, et al.  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
(248) 354-9650

Norman C. Ankers (P30533)  
HONIGMAN MILLER  
SCHWARTZ AND COHN LLP  
Attorneys for Defendants  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226  
(313) 465-7000

Bobby R. Burchfield, Esq.  
McDERMOTT WILL & EMERY  
Attorneys for Defendants  
The McDermott Building  
500 North Capital Street, Northwest  
Washington, D.C. 20001  
(202) 756-8000

**PLAINTIFFS' RESPONSE TO CNH'S EMERGENCY MOTION FOR  
CLARIFICATION THAT PLAINTIFFS' REBUTTAL EXPERT  
DISCLOSURES ARE DUE DECEMBER 16, 2013**



Defendant CNH requests “clarification” of an order that is abundantly clear. In this Court’s Order of October 31, 2013, Docket #372, the Court granted in part, Plaintiffs’ request to extend the scheduling order. The Court set forth the scheduling order in effect as of September 29, 2013:

8/13/13	Defendants to respond to Plaintiffs’ discovery requests
9/27/13	Reports due from Plaintiffs’ experts
10/17/13	Reports due from Defendants’ experts
11/18/13	Discovery closes & Plaintiffs’ rebuttal expert report(s) due
12/3/13	Dispositive motion cut-off
1/3/14	Dispositive motion(s) response(s) due
1/10/14	Dispositive motion(s) reply brief(s) due

(citing ECF No. 360).

The Court went on to rule:

**IT IS ORDERED**, that Plaintiffs’ Second Motion for Extension of Scheduling Order and Request for Immediate Consideration is **GRANTED IN PART AND DENIED IN PART** in that the deadlines set forth above that have not passed are extended by **SIXTY (60) DAYS**.

Defendant CNH now moves to “clarify” the order.

Clearly, as of the date of the order - October 31, 2013 - the November 18, 2013 deadline for Plaintiffs’ rebuttal expert report(s) had not passed and was, therefore, extended by sixty days, to January 17, 2013.<sup>1</sup> Plaintiffs maintain that there is no lack of clarity in the order.

Additionally, CNH’s motion seeks only reconsideration and is untimely under LR 7.1 (h) (1).

---

<sup>1</sup> Defendant CNH misstates the current discovery cutoff of January 17, 2014.



There is no exigency with respect to this meritless motion.

Plaintiffs offered to stipulate to a rebuttal expert deadline earlier than January 17, 2013 *on the condition that the Defendants would provide discovery responses related to their expert witnesses' opinions by a date certain*. Defendants have refused to commit to providing discovery responses and have admittedly withheld documents pending a protective order. The proposed protective order was not received until November 19, 2013 and contains an objectionable “attorneys-eyes-only” provision. The parties are discussing the protective order, but CNH has not agreed to provide the requested discovery. Additionally, CNH is resisting discovery requests made by subpoena directly to their expert Scott Macey, and have admittedly not provided full responses. See Plaintiffs’ recently filed motion to compel, Docket #373.

CNH has also not yet answered other discovery requests served upon them on November 5, 2013. Notably, those requests include a request that CNH produce the documents in its possession that are responsive to the subpoenas, including the subpoena served on Macey.

Plaintiffs do not intend to impede Defendants from taking the depositions of experts. Class counsel requested a conference to schedule expert depositions. Plaintiffs were prepared to provide twenty-one alternate dates for depositions of their three experts and to schedule the depositions of the Defendants’ experts.



Defendants refused to schedule depositions, despite Plaintiffs' counsel's repeated concern that it would become increasingly difficult to schedule the depositions as time went on.

CNH has applied a continued strategy to resist discovery while pushing the time restrictions for Plaintiffs. Plaintiffs respectfully request that the Court deny this motion and allow Plaintiffs the time needed to explore the need for rebuttal expert opinions (including the review of the pending discovery) and obtain their reports.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: /s/Darcie R. Brault  
Darcie R. Brault (P43864)  
Attorneys for Class Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
(248) 354-9650  
[dbrault@michworklaw.com](mailto:dbrault@michworklaw.com)

Date: December 2, 2013



### **CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2013 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will serve it on all parties.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: /s/Darcie R. Brault  
Darcie R. Brault (P43864)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
(248) 354-9650  
[dbrault@michworklaw.com](mailto:dbrault@michworklaw.com)

Dated: December 2, 2013